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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/046,066	01/15/2002	David Tye	021878.0002US1	2831

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EXAMINER

CHIN, PAUL T

ART UNIT	PAPER NUMBER
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3652

DATE MAILED: 01/27/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/046,066

Applicant(s)

TYE, DAVID

Examiner

PAUL T. CHIN

Art Unit

3652

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 November 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 19-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 19-26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 January 2002 and 01 November 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

1. Applicant's amendment filed November 1, 2004, and the arguments presented therewith have been carefully considered. Note that applicant cancels claims 1-18 and 27-29. The argument of Grams et al. (6,371,717) in light of the amended claims is persuasive and the claim rejection (with respect to claims 19-29) of Grams et al. (6,371,717) has been withdrawn. However, Applicant's arguments are moot in view of the new ground(s) of rejection. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, THIS ACTION IS MADE FINAL.

Priority

2. Applicant has not complied with one or more conditions for receiving the benefit of an earlier filing date under 35 U.S.C. 119(e) as follows: the applicant filed a provisional application 60/247,331 on November 10, 2000, and further filed this application on January 15, 2002, which is more than one year. Therefore, applicant's claim for domestic priority under 35 U.S.C. 119(e) is denied.

Oath/Declaration

3. The new oath or declaration submitted on November 1, 2004, has been approved.

Drawings

4. The replacement sheet of Figure 2C, filed November 1, 2004, is approved. However, the provided figure 3 is disapproved. The drawing (Figure 3) is objected to because it appears that the newly given reference "313" is labeled in the wrong structural element. It is pointed out that the previously canceled claims 3,6,7,11, and 15 recite the limitations, "a gripping head comprising a motorized base and a plurality of claws mounted on the motorized base enabling the claws to securely grip". Therefore, it appears that "the motorized base" is a part of the gripping head. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in

reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

5. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference character(s) not mentioned in the description: "311" (interface of the replaced Fig. 3) and "313" (motorized base of the replaced Fig. 3). Corrected drawing sheets in compliance with 37 CFR 1.121(d), or amendment to the specification to add the reference character(s) in the description in compliance with 37 CFR 1.121(b) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

6. The disclosure is objected to because of the following informalities: the paragraph [001] should be deleted because applicant's claim for domestic priority under 35 U.S.C. 119(e) is denied (see section 2 above). Appropriate correction is required.

Claim Objections

7. Claims 20 and 23 are objected to because of the following informalities: it appears that the word "a" before "space" (claim 20, line 2) should be changed to -- said -- (since "a space" is already recited in claim 19, line 2) and the word "a" before "longest" (claim 23, line 2) should be changed to -- said --. Appropriate correction is required.

Claim Rejections - 35 USC § 102

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9. Claims 19, 20, and 23 are rejected under 35 U.S.C. 102(b) as being anticipated by Simmons et al. (5,895,195) (see PTO-892).

Simmons et al. (5,895,195) discloses a device for unloading a rack for storing containers, comprising a rack having a first space storing a front container (15C, 26A, 26B, 26C) (see Exhibit A, Fig. 4), a second space storing a rear container, the first container blocking the second container, the device having an extending arm (see Exhibit A) that extends through the front space into the rear space.

Re claim 23, the extending arm has an un-extended length (see Fig. 4) and a fully extended length (see Fig. 5).

Art Unit: 3652

10. Claims 19,20, and 23 are rejected under 35 U.S.C. 102(b) as being anticipated by Tonjes (5,244,330).

Tonjes (5,244,330) discloses a device for unloading a rack (22) and loading to another rack (14) for containers, comprising a rack having a first space storing a front container (see Exhibit B, Fig. 5), a second space storing a rear container, the first container blocking the second container, the device having an extending arm (74) (see Exhibit B) that extends through the front space into the rear space.

Re claim 23, the extending arm has an un-extended length (see Fig. 5) and a fully extended length.

11. Claims 19,20, and 23 are rejected under 35 U.S.C. 102(b) as being anticipated by Butterly, Jr. et al. (4,634,33) (see PTO-892).

Butterly, Jr. et al. (4,634,33) discloses a device for unloading containers comprising a rack (see Exhibit C of Fig. 13) having a first space storing a front container (64), a second space storing a rear container, the first container blocking the second container, the device having an extending arm (51,57,54,61,56,62) that extends through the front space into the rear space. It is pointed out that the pushers can extend from the initial position (15A) to the final position (15C) (see Fig. 13) (Col 12, lines 3-31).

Re claim 23, the extending arm has an un-extended length (15A position) and a fully extended length (15C position).

12. Claims 19,20,21, and 23 are rejected under 35 U.S.C. 102(b) as being anticipated by the European Patent (EP 0 534 558).

The European Patent (EP 0 534 558) discloses a device comprising a rack (1) having a first space storing a front container (see Exhibit D), a second space storing a rear container, the first container blocking the second container, the device having an extending arm (13) (see Figs. 5 and 6) that extends through the front space into the rear space.

Re claim 21, the extending arm has at least one gripping head (14,14) (see Fig. 4) that grips a container.

Re claim 23, the extending arm has an un-extended length (see Fig. 5) and a fully extended length (see Fig. 6).

Claim Rejections - 35 USC § 103

13. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

14. Claims 21,22, and 24-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Simmons et al. (5,895,195) or Tonjes (5,244,330) in view of Grams et al. (6,371,717) (see PTO-892).

Simmons et al. (5,895,195), as presented in section 9 above, shows an extending arm further have a head to push the containers, but does not clearly show a gripping head that grips a container. Similarly, Tonjes (5,244,330), as presented in section 10 above, shows an extending arm further have a head (76) having avoid (78) to receive the top of the container, but does not clearly show that the head grips a container. However, Grams et al. (6,371,717) discloses a device for loading and unloading water bottle containers comprising a gripping mechanism (140) having a plurality of gripping claws

(142,142) and a shoulder pad (146) to grip a bottle container. Accordingly, it would have been obvious to one of the ordinary skill in the art at the time the invention was made to provide a well-known gripping mechanism on the Simmons et al. (5,895,195) or Tonjes (5,244,330) as taught by Grams et al. (6,371,717) not only to firmly grip the top of each water bottle container but also to prevent the top of the bottle container from damaging. Re claim 26, the modified Simmons et al. (5,895,195) shows that a loading arm (84-88) wherein the (maximum) diameter of the loading arm is less than the diameter of the front container. Similarly, the modified Tonjes (5,244,330) shows that a loading arm (72) (wherein the maximum diameter of the loading arm is less than the maximum diameter of the front container).

15. Claims 22,24, and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over the European Patent (EP 0 534 558) in view of McGrath (5,460,461).

The European Patent (EP 0 534 558), as presented in section 12 above, does not show a pad to support a container. However, McGrath (5,460,461) discloses a pad (39,51) (Fig. 1) to prevent the surface of the gripped object. Accordingly, it would have been obvious design choice to provide a pad on the gripping head (14) of European Patent (EP 0 534 558) as taught by McGrath (5,460,461) to prevent the outer surface of the gripped container.

Response to Arguments

16. Applicant's amendment filed November 1, 2004, and the arguments presented therewith have been carefully considered. Applicant cancels claims 1-18 and 27-29. The argument of Grams et al. (6,371,717) in light of the amended claims is persuasive and the claim rejection

(with respect to claims 19-26) has been withdrawn. However, Applicant's arguments are moot in view of the new ground(s) of rejection.

Conclusion

17. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

18. Applicant's amendment (the deletion and the addition of new limitations in claims 19 and 26 in combination with other structural limitations) necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to PAUL T. CHIN whose telephone number is (703) 305-1524. The examiner can normally be reached on MON-THURS (7:30 -6:00 PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, EILEEN LILLIS can be reached on (703) 308-3248. The fax phone numbers for the

Art Unit: 3652

organization where this application or proceeding is assigned are (703) 872-9326 for regular communications and (703) 872-9327 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 306-1113.

ptc

PTC

January 21, 2005


EILEEN D. LILLIS
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600

EXHIBIT A

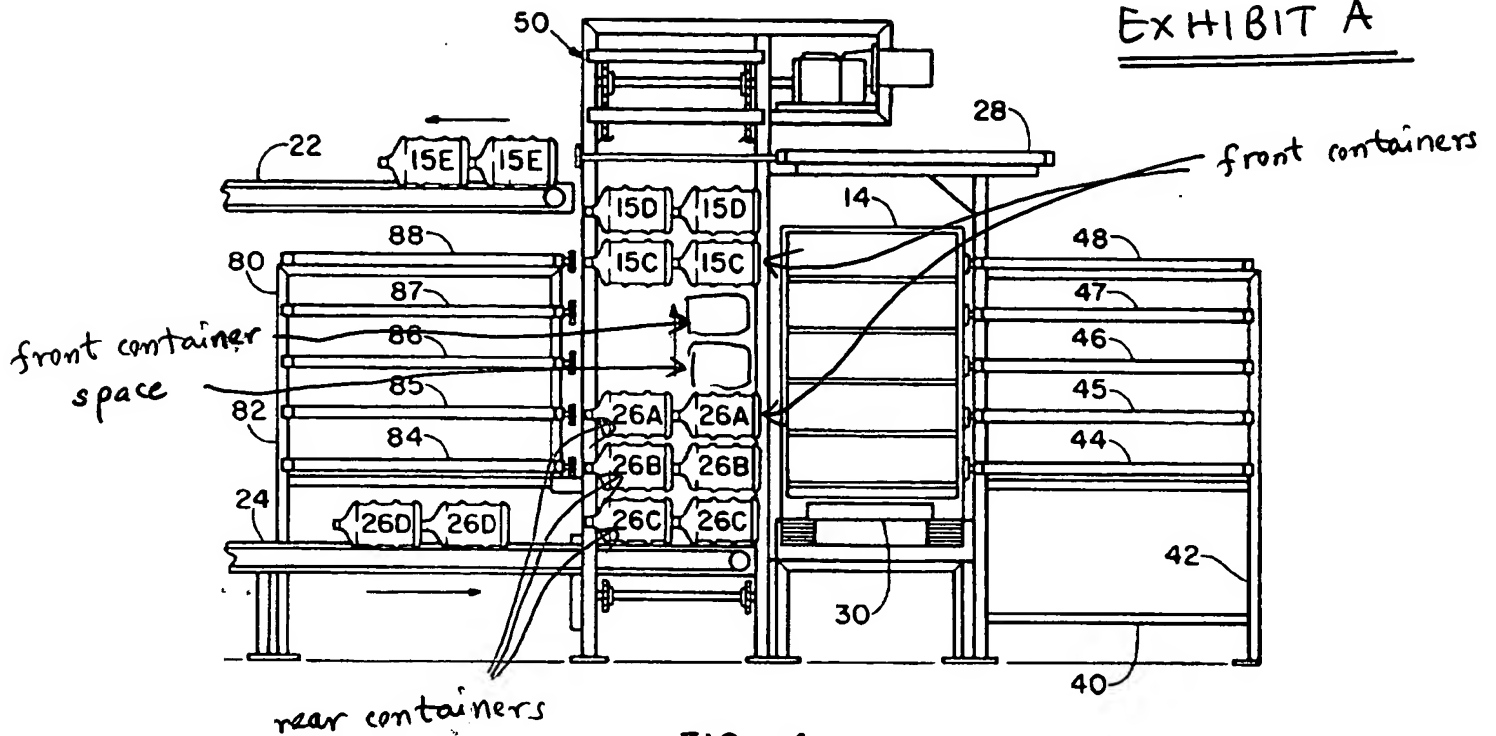


FIG. 4

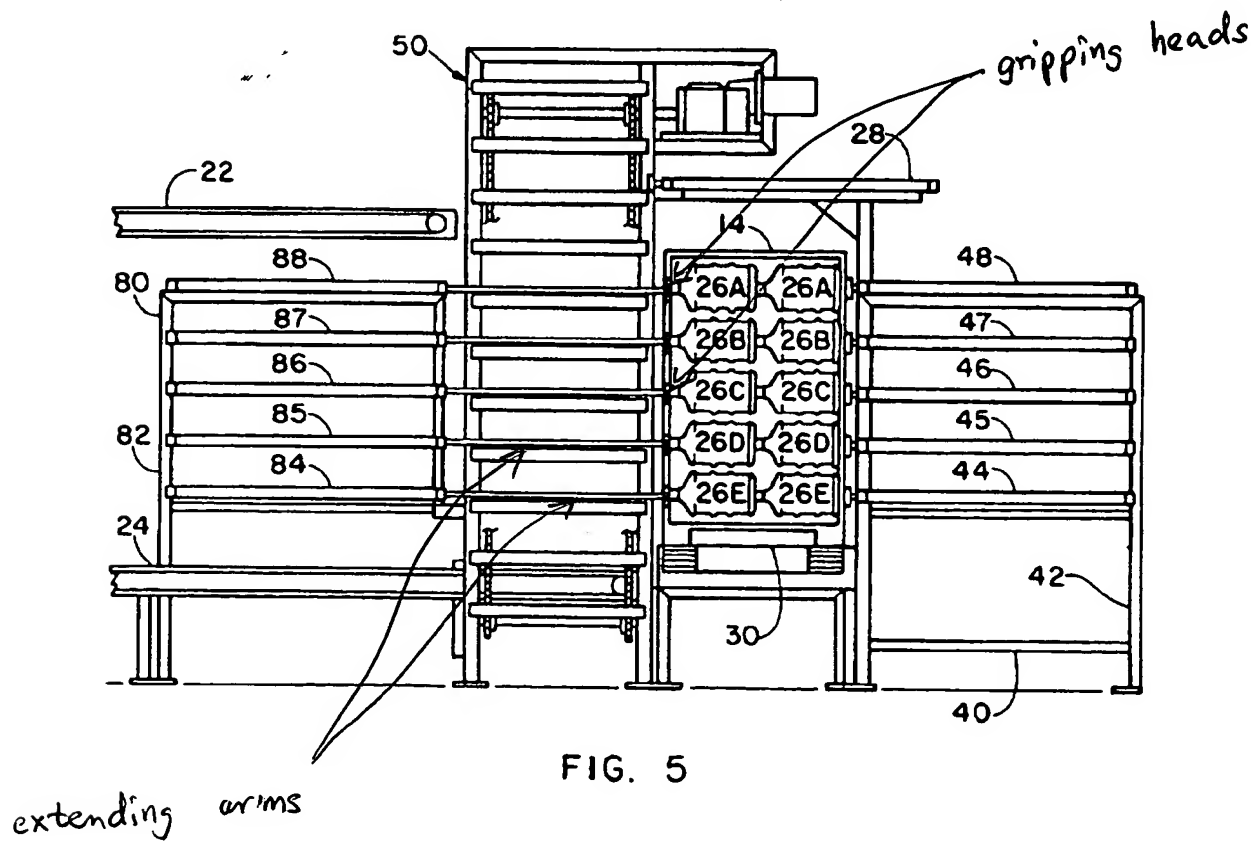


FIG. 5



FIG. 13

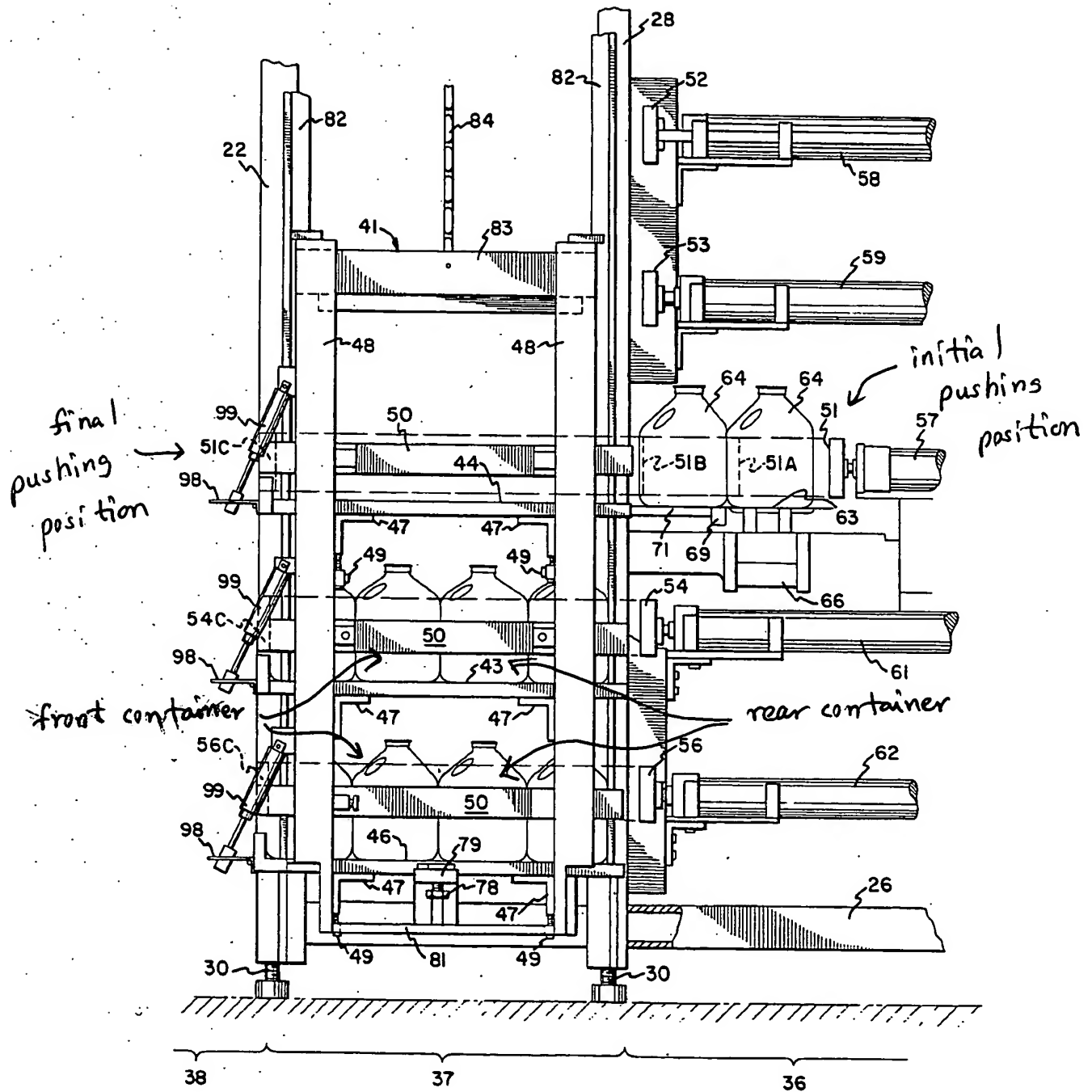
EXHIBIT C

EXHIBIT ①